

**STATE OF WEST VIRGINIA
WEST VIRGINIA SECURITIES DIVISION
BEFORE THE SECURITIES COMMISSIONER
CHARLESTON, WEST VIRGINIA 25305**

IN THE MATTER OF:

**The West Virginia Uniform Securities Act,
Chapter 32, Article 2, Section 202(b)**

**ORDER
CASE NO.97-1228**

AMENDED

ORDER APPROVING
PROCEDURES FOR
IMPLEMENTATION OF
NOTICE FILING BY
FEDERAL COVERED
ADVISED

Pursuant to the authority granted by Chapter 32 of the West Virginia Code, 1931, as amended, the West Virginia Uniform Securities Act, (hereinafter referred to as the "Act"), and particularly Chapter 32, Article 2, Section 202 of the Act, the Commissioner of Securities "hereinafter referred to as the "Commissioner"), has reviewed the registration and notice filing procedure, Chapter 32, Article 2, Section 202(b) of the Act, which is effective July 11, 1997.

Pursuant to said review, the Commissioner finds as follows:

FINDINGS OF FACT

1. The Act provides a federal covered adviser shall file with the Commissioner, prior to acting as a federal covered adviser in this state, such documents as have been filed with the securities and exchange commissioner as the commissioner, by rule or order, may require along with notice filing fees under subsection (c), section two hundred two, article two, chapter thirty-two of this code.

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- (c) Every applicant for initial or renewal registration shall pay a filing fee of two hundred fifty dollars (\$250.00) in the case of a broker-dealer **and** the agent of the issuer, fifty-five dollars (\$55.00) in the case of an agent, one hundred seventy dollars (\$170.00) in the case of an investment adviser, and fifty dollars (\$50.00) for each investment adviser representative. When an application is denied or withdrawn, the Commissioner shall retain all of the fee.
2. Neither the Act nor existing regulations provide a method for implementing the notice filing by federal covered adviser.
 3. The Commissioner finds that this Order is necessary and appropriate and in the public interest.

CONCLUSIONS OF LAW

1. Chapter 32, Article 4, Section 412(a) of the Act provides that the Commissioner may issue orders as are necessary to carry out the provisions of the Act.
2. Chapter 32, Article 2, Section 202(b) of the Act provides that the Commissioner may require documents by rule or order.
3. This Order is consistent with the purposes fairly intended by the policies and provisions of the Act as required in Chapter 32, Article 4, Section 412(b) of the Act.

IT IS THEREFORE, ORDERED THAT:

- A. Every person who transacts business in this State as a federal covered adviser shall file notice as prescribed in subsection B, below, with the Commissioner at its Division of Securities or such other entity designated by the Commissioner.
- B. Application for notice as a federal covered adviser shall be deemed incomplete unless the following executed forms, fee and information are submitted.
 1. Part One (I) of Form ADV.
 2. Schedule A or B or C
 3. Statutory fee in the amount of One Hundred Seventy dollars (\$170.00). The check must be made payable to the West Virginia State Auditor.
 4. Consent to Service of Process on Form U-2.

- C. A federal covered adviser's notice filing shall expire annually at midnight on the 31st day of December, unless renewed.
- D. A renewal of notice filing shall be granted as a matter of course upon payment of the proper fee.
1. All changes in the information included in a federal covered adviser's Part One (1) and Schedule A or B or C of Form ADV shall be filed with the Commissioner at the same time such amendment is filed with the U.S. Securities and Exchange Commission.
 2. The statutory fee in the amount of fifty dollars (\$50.00) for each name or address change.
- E. Deleted
- F. Termination of Notice Filing.
1. When a federal covered adviser desires to terminate its notice filing, it shall file a written request for such termination with the Commissioner. A federal covered adviser may file SEC Form ADV-W in lieu of a written request for termination.
- G. Every investment adviser representative of a federal covered adviser who has a place of business in this State, as defined in subsection H, below shall be registered or exempted under the Act.
- H. "Place of business" means:
1. An office at which the investment adviser representative regularly provides investment advisory services, solicits, meets with or otherwise communicates with clients, and (2) any other location that is held out to the general public as a location at which the investment adviser representative provides investment advisory services, solicits, meets with, or otherwise communicates with clients.
- I. It is unlawful for any federal covered adviser to employ, supervise, or associate with an investment adviser representative having a place of business located in this State, unless such investment adviser representative is

registered or is exempt from registration. Applicants for investment adviser representative of a federal covered adviser shall register as prescribed in subsection J, below, with the Commissioner at its Division of Securities or such other entity designated by the Commissioner.

- J. Application for investment adviser representative of a federal covered adviser shall be deemed incomplete unless the following executed forms, fee and information are submitted:
 - 1. Form U-4 Uniform Application for Securities Industry Registration or Transfer.
 - 2. The statutory fee in the amount of Fifty dollars (\$50.00). The check must be made payable to the West Virginia State Auditor.
 - 3. Proof of exams, (Series 65 and one (1) other, or just a Series 66).
- K. An investment adviser representative registration shall expire annually at midnight on the 31st day of December, unless renewed.
- L. A renewal of registration shall be granted as a matter of course upon payment of the proper fee unless the registration was, or the renewal would be, subject to revocation or suspension under 32-3-204 of the Act.
- M. Reporting Requirements, Updates and Amendments for Investment Adviser Representatives.
 - 1. Each investment adviser representative shall file with the Commissioner a copy of any complaint related to his or her business, transactions or operations in this State, naming the investment adviser representatives as defendants in any civil or criminal proceeding, or in any administrative or disciplinary proceeding by any public or private regulatory agency, within twenty (20) days of the date of the complaint is served on the investment adviser representative within ten (10) days of the date the answer or reply is filed; and a copy of any decision, order or sanction made with respect to any proceeding within twenty (20) days of the date the decision, order or sanction is rendered.

2. Each investment adviser representative shall file all changes in the information included in his or her most recent Form U-4 filed with the Commissioner within ten (10) days after the change occurs.
3. The qualification of an investment adviser representative is not effective during any period when the federal covered adviser which the person represents has not filed proper notice or during any period in which the representative is not employed by a specified federal covered adviser under Chapter 32 of the Code of West Virginia.
4. An application for withdrawal from the State of West Virginia of a qualified investment adviser representative shall be filed by the representative within ten (10) days of the termination of the representative's employment on Form U-5.

N. Deleted

O. Deleted

P. This Order shall remain in effect until modified or vacated by the Commissioner.

Entered this 15th day of July, 1997.
Amended August 18, 1997

Glen B. Gainer, III
Commissioner of Securities